

RESOLUTION APPROVING ASSET PURCHASE AGREEMENT WITH AQUA OHIO, INC. FOR GREEN ROAD/INFIRMARY ROAD WATERLINE, KINGSVILLE TOWNSHIP, CERTAIN WATER DISTRIBUTION FACILITIES WITHIN THE COUNTY GENERAL WATER & SEWER DISTRICT, ACDES

WHEREAS, Ashtabula County (seller) owns certain water distribution facilities within its Ashtabula County General Water and Sewer District along the right-of-way of Green Road (fka "Infirmary Road") in the Township of Kingsville, Ohio, along with other ancillary facilities (the "Main") located as described herein. The Main is more particularly described on *Exhibit A* attached hereto and incorporated herein and any Easements in which the main is located; and

WHEREAS, Aqua is a public water utility that furnishes retail water service to the Ashtabula County Water System and corresponding successive public water systems pursuant to that certain wholesale bulk water Agreement dated December 29, 2016 between the Parties and accompanying Agreement for Transmission and Storage of Water dated December 16, 2002; and

WHEREAS Seller desires to sell, and Aqua desires to purchase the Main and Seller, attendant thereto shall grant to Aqua the use of the Right of Way where the Main is located and shall assign and convey to Aqua any Easement rights attendant to the Main; and

WHEREAS, Doug Starkey, Director of ACDES, has presented an asset purchase agreement for the approval of the Board, to-wit:

Provider: Aqua Ohio, Inc., 6650 South Ave., Boardman, OH 44512

Scope: an asset purchase agreement for the main as describe above and more fully in the Exhibit A, with any easement rights

Cost: Not to Exceed, \$1.00 payable at closing

THEREFORE, BE IT RESOLVED, by the Board of Commissioners of Ashtabula County, Ohio, and for good and valuable consideration, including the mutual representations, warranties, covenants, duties and obligations herein contained, the receipt and sufficiency of such consideration being hereby acknowledged, the Parties hereby agree as set forth in this Agreement.

BE IT FURTHER RESOLVED that the President of the Board, on behalf of the Board of Commissioners of Ashtabula County, is authorized to execute any and all necessary documents.

**ASHTABULA COUNTY COMMISSIONERS
CERTIFICATION PAGE**

Resolution No. 2021-52SEWA

December 21, 2021

RESOLUTION APPROVING ASSET PURCHASE AGREEMENT WITH AQUA OHIO, INC. FOR GREEN ROAD/INFIRMARY ROAD WATERLINE, KINGSVILLE TOWNSHIP, CERTAIN WATER DISTRIBUTION FACILITIES WITHIN THE COUNTY GENERAL WATER & SEWER DISTRICT, ACDES

Upon the motion of Kathryn L. Whittington, seconded by Casey R. Kozlowski.

VOTE:

**Kathryn L. Whittington
J.P. Ducro IV
Casey R. Kozlowski**

**Aye
Aye
Aye**

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.

Crystal Sturgill
Crystal Sturgill, Clerk of the Board
Board of County Commissioners
Ashtabula County, Ohio

Acting

**ASSET PURCHASE AGREEMENT
GREEN ROAD/INFIRMARY ROAD WATERLINE, KINGSVILLE TOWNSHIP
ASHTABULA COUNTY GENERAL WATER & SEWER DISTRICT
ASHTABULA COUNTY, OHIO**

THIS PURCHASE AGREEMENT (the "Agreement") is made and entered into as of December 21, 2021, (the "Effective Date") by and between the Board of Commissioners of Ashtabula County, Ohio; by and through the Ashtabula County Department of Environmental Services, a political subdivision of the State of Ohio and a "public agency" pursuant to Chapter 6103 of the Ohio Revised Code ("Seller"), and Aqua Ohio, Inc., an Ohio corporation ("Aqua"). Seller and Aqua are each individually a "Party" and collectively, the "Parties".

RECITALS

A. Seller owns certain water distribution facilities within its Ashtabula County General Water and Sewer District along the right-of-way of Green Road (fka "Infirmary Road") in the Township of Kingsville, Ohio, along with other ancillary facilities (the "Main") located as described herein. The Main is more particularly described on *Exhibit A* attached hereto and incorporated herein and any Easements in which the main is located .

B. Aqua is a public water utility that furnishes retail water service to the Ashtabula County Water System and corresponding successive public water systems pursuant to that certain wholesale bulk water Agreement dated December 29, 2016 between the Parties and accompanying Agreement for Transmission and Storage of Water dated December 16, 2002.

C. Seller desires to sell, and Aqua desires to purchase the Main and Seller, attendant thereto shall grant to Aqua the use of the Right of Way where the Main is located and shall assign and convey to Aqua any Easement rights attendant to the Main.

NOW, THEREFORE, for good and valuable consideration, including the mutual representations, warranties, covenants, duties and obligations herein contained, the receipt and sufficiency of such consideration being hereby acknowledged, the Parties hereby agree as set forth in this Agreement.

1. **SALE AND PURCHASE OF THE MAIN.** Subject to the terms and provisions hereinafter set forth, at "Closing" (hereinafter defined), Aqua shall purchase the "Main" from Seller, and Seller shall sell, assign, transfer, convey and deliver the Main to Aqua, free and clear of any and all mortgages, liens, pledges, interests, security interests, encumbrances, claims, restrictions or rights of any person or entity of any kind, nature or description whatsoever, (collectively the "Liens").

2. **PURCHASE PRICE.** The total purchase price (the "Purchase Price") for the Main and attendant Assignment of Easements is **One Dollar (\$ 1.00 US)** payable at Closing.

3. **GRANT OF RIGHT OF WAY / ASSIGNMENT OF EASEMENTS.** Subject to the terms and provisions hereinafter set forth, at "Closing" (hereinafter defined):

- a. To Seller's knowledge, there are no express easements for any real property where the Main is located. To the extent Seller has any easement rights, whether

shall be deemed to be satisfied with the state of the Main, and the parties shall proceed to Closing. Aqua shall provide to Seller copies of all reports generated as a result of its investigation of the Main.

6. **DISCLAIMER OF WARRANTIES/"AS IS" CONDITION.** EXCEPT AS SPECIFICALLY STATED HEREIN, SELLER HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING WARRANTIES OF HABITABILITY AND FITNESS FOR PARTICULAR PURPOSE), WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES WITH RESPECT TO THE MAIN. AQUA FURTHER ACKNOWLEDGES THAT AQUA IS PURCHASING THE MAIN "AS IS" AND IN ITS PRESENT CONDITION AND THAT AQUA IS NOT RELYING UPON ANY REPRESENTATION OF ANY KIND OR NATURE MADE BY SELLER OR BY SELLER'S AGENTS WITH RESPECT TO THE MAIN EXCEPT AS STATED HEREIN.
7. **REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller hereby represents and warrants unto Aqua as follows:
 - a. Seller is a political subdivision duly organized, validly existing and in good standing under the laws and statutes of the State of Ohio.
 - b. The Main is free of all liens and encumbrances.
 - c. Seller has the full legal power and lawful authority to execute and deliver this Agreement and all other documents, instruments and agreements to be executed and delivered pursuant to this Agreement (collectively, the "Transaction Documents") or necessary to consummate the sale and Seller has or will take all appropriate municipal actions to consummate the sale.
 - d. The execution and delivery of this Agreement and Transaction Documents have been duly authorized by Seller's Board.
 - e. This Agreement and the Transaction Documents constitute the valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.
8. **REPRESENTATIONS AND WARRANTIES OF AQUA.** Aqua hereby represents and warrants unto Seller as follows.
 - a. Aqua is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio.
 - b. Aqua has the full legal power and lawful authority to execute and deliver this Agreement and the Transaction Documents.
 - c. This Agreement and the Transaction Documents constitute the valid and binding obligations of Aqua enforceable against Aqua in accordance with their respective terms.
 - d. Aqua has the financial wherewithal to pay the Purchase Price to Seller, to consummate Aqua's purchase of the Main.

9. CLOSING.

- a. Subject to the terms and conditions contained in this Agreement (the "Closing") shall take place, on a date selected by the Parties to occur subsequent to no later than **December 15, 2021**.
- b. At the Closing, Seller shall deliver to Aqua:
 - i. An executed bill of Sale for the Main attached hereto as *Exhibit B*;
 - ii. All documentation in Seller's possessions concerning the Main inclusive of record drawings, as well as certified copies of Resolutions or Journal Entries of the Board of Commissioners pertinent to the construction of the facilities in 1977 as a Change Order to the Ashcraft WWTP construction project.
- c. At the Closing, Aqua shall deliver to Seller the Purchase Price, and any other documents necessary to effectuate this transaction.

10. CONDITIONS PRECEDENT TO OBLIGATION TO CLOSE. A Parties obligation to consummate the sale and the other transactions described in and contemplated by this Agreement is subject to the fulfillment or satisfaction at or prior to the Closing of each of the following conditions precedent:

- a. Seller has not received notice that the Main has been materially damaged or destroyed;
- b. Aqua shall be reasonably satisfied with its Title Inspection pursuant to paragraphs 4 and 5;
- c. Seller shall have authorized the consummation of each transaction by valid Resolution of the Board of Ashtabula County Commissioners in accordance with Ohio law.

11. COMMUNICATIONS. All notices, requests, demands, waivers, consents, directions, objections, designations, authorizations, transmittals and other communications required or desired to be given pursuant to this Agreement or any of the Transaction Documents will be given in writing and will be deemed duly given upon personal delivery, or on the third day after mailing if sent by certified mail, postage prepaid, return receipt requested, or on the day after deposit with nationally recognized overnight delivery service which maintains records of the time, place and recipient of delivery, and in each case if directed as follows:

if to Seller, then to:

Kathryn Whittington, President of the Board
Ashtabula County Board of Commissioners
25 W. Jefferson Street
Jefferson, OH 44047

if to Aqua, then to:

Aqua Ohio, Inc.
Robert Lee Davis, President & COO
6650 South Avenue
Boardman, OH 44512

or to such other person, entity or address as a Party may respectively designate in like manner, from time to time.

12. General.

- a. This Agreement and the Transaction Documents will be governed, construed and interpreted in accordance with the laws and decisions of the State of Ohio without regard to conflicts of law principles that would require the laws of another state or jurisdiction be applied.
- b. This Agreement and the Transaction Documents collectively constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof and thereof, and supersede all prior and contemporaneous verbal and written communications, agreements, assurances and understandings between the Parties with respect thereto.
- c. Neither this Agreement nor any of the Transaction Documents may be amended, changed, modified or discharged, except by a writing signed by both Parties.
- d. This Agreement and the Transaction Documents may be executed in multiple counterparts, with the same effect as if the signatures to each counterpart were set forth upon a single counterpart.
- e. Each Party shall, upon request from the other Party from time to time, and without any additional compensation or remuneration, execute and deliver such further documents, instruments, certificates and agreements and take, or cause to be taken, such other actions as are necessary or appropriate to effectuate the sale and purchase of the Main and the other transactions described in or contemplated by this Agreement.
- f. Each Party acknowledges and agrees that they have participated equally in the preparation of this Agreement and the Transaction Documents and, accordingly, if any provision of this Agreement or any Transaction Document requires judicial interpretation, the court interpreting such provision shall not construe such provision, this Agreement or any of the Transaction Documents against either Party.

SIGNATURES ON NEXT PAGE

SELLER:


Kathryn L. Whittington
President of the Board
Ashtabula County Board of Commissioners

AQUA:


Robert Lee Davis
President & COO
Aqua Ohio, Inc.

Board Resolution No. 2021-⁵² SEWA, Passed on Dec. 21, 2021

EXHIBIT A

Main Description

The waterline as described within a Request for Proposals/Request for Qualifications as published and issued by the Ashtabula County Board of Commissioners on July 27, 2021 consists of approximately 1,872 linear feet (more or less) of 8-inch pipe manufactured of asbestos cement material, better known as "transite;" which is situated along the western right-of-way of Green Road (fka "Infirmery Road") in the Township of Kingsville, County of Ashtabula, State of Ohio. The infrastructure also includes approximately two 6-inch hydrant assemblies, one 2-inch hydrant assembly, each with watch valve and valve box; two 8-inch mainline gate valves, five (5) service connections to existing properties serviced by Aqua Ohio, Inc.; and a structure with appurtenances formerly serving as a master meter vault located near the southern terminus of the waterline.

EXHIBIT B

BILL OF SALE OF MAIN PIPE

TO AQUA OHIO, INC., FROM COUNTY OF ASHTABULA, OHIO

GREEN ROAD (fka "INFIRMARY ROAD") WATERLINE

KINGSVILLE TOWNSHIP, ASHTABULA COUNTY GENERAL WATER & SEWER DISTRICT

KNOW ALL MEN BY THESE PRESENTS that The Board of Ashtabula County Commissioners, by and through the Ashtabula County Department of Environmental Services (collectively hereinafter referred to as "Seller") for the sum of ONE DOLLAR (\$1.00) and other good and valuable considerations paid by Aqua Ohio, Inc. (hereinafter "Purchaser"), the receipt of which is hereby acknowledged, has granted, bargained, sold, transferred, set over and delivered, and by these presents does grant, bargain, sell, transfer, set over and deliver, unto the Purchaser, its successors and assigns, that certain section of sewer / storm drain pipe in "as-is" condition, without representation or warranty as to its condition, usefulness or fitness for any purpose as more fully described below:

Main pipe consisting of approximately 1,872 ft. of 8-inch transite main, along with any miscellaneous valves, fittings and other related appurtenances, installed in the Right of Way of Green Road (fka "Infirmary Road"), and any and all Easements from a point at the intersection of State Route 84/South Ridge Road and the former terminus of Green Road northward to the terminus of the waterline in Kingsville Township, Ashtabula County, Ohio, as more fully described in the attached Exhibit A (hereinafter the "Assigned Assets").

Seller hereby assigns all right-of-way, easement, and ingress/egress rights associated with the Assigned Assets to Buyer.

Seller represents and warrants that it has exclusive ownership, possession, control, and marketable title to the Assigned Assets.

This instrument is being executed by action of the Board of County Commissioners of Ashtabula County, Ohio, and shall be binding upon It, its successors and assigns, for the uses and purposes above set forth and referred to, and shall be effective as of the date hereof.

This instrument shall be governed by and enforced in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, The Board of Commissioners of Ashtabula County, Ohio has caused this Bill of Sale to be executed this 21st day of December, 2021.



Kathryn L. Whittington
President, Board of Commissioners
Ashtabula County, Ohio

EXHIBIT B. Schedule 1

Main Description

The waterline as described within a Request for Proposals/Request for Qualifications as published and issued by the Ashtabula County Board of Commissioners on July 27, 2021 consists of approximately 1,872 linear feet (more or less) of 8-inch pipe manufactured of asbestos cement material, better known as "transite;" which is situated along the western right-of-way of Green Road (fka "Infirmity Road") in the Township of Kingsville, County of Ashtabula, State of Ohio. The infrastructure also includes approximately two 6-inch hydrant assemblies, one 2-inch hydrant assembly, each with watch valve and valve box; two 8-inch mainline gate valves, five (5) service connections to existing properties serviced by Aqua Ohio, Inc.; and a structure with appurtenances formerly serving as a master meter vault located near the southern terminus of the waterline.

PROSECUTOR'S SIGNATURE PAGE

~~AGREEMENT TITLE: Asset Purchase Agreement – Green Road (“Infirmery Road”) Waterline, Ashtabula County General Water & Sewer District~~

This instrument is approved as to Legal Form Only.



Colleen M. O'Toole, Esq.
Prosecuting Attorney, Ashtabula Co.

11-17-2021, 2021
Date